United States Court of Appeals

for the Second Circuit

RESPONDENT'S BRIEF

w/affidavit

75-4092

To be argued by
THOMAS H. BELOTE

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-4092

SIMCHA RAIZMAN,
Petitioner,

—v.—

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

B
P/S

PETITION FOR REVIEW OF AN ORDER OF THE
BOARD OF IMMIGRATION APPEALS

BRIEF FOR RESPONDENT

ROBERT B. FISKE, JR.,
United States Attorney for the
Southern District of New York,
Attorney for Respondent.

THOMAS H. BELOTE,
MARY P. MAGUIRE,
Special Assistant United States Attorneys,
Of Counsel.

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UNITED STATES COURT OF APPEALS

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SIMCHA RAIZMAN,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

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RESPONDENT'S BRIEF

Statement of the Issue

1. Whether the petitioner, who is admittedly deportable, has been convicted of a violation of any law or regulation relating to the illicit possession of marijuana within the meaning of 8 U.S.C. § 1182(a)(23).

2. Whether the petitioner's claim that the Israeli Dangerous Drug Ordinance of 1936 and the Israeli Customs Ordinance of 1957 impose absolute liability and make guilty

knowledge irrelevant are properly before this Court in this petition for review.

Statement of the Case

Pursuant to Section 106(a) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1105(a), Simcha Raizman petitions this Court for review of a final order of deportation entered by the Board of Immigration Appeals (the "Board") on February 20, 1975. The order dismissed an appeal from a decision of an Immigration Judge which found Raizman deportable as an overstay visitor under Section 241(a)(2) of the Act, 8 U.S.C. § 1251(a)(2). The decision further denied Raizman's application for adjustment of status pursuant to Section 245 of the Act, 8 U.S.C. § 1255, on the ground that Raizman is ineligible for adjustment of status since he is inadmissible to the United States under Section 212(a)(23) of the Act, 8 U.S.C. § 1182(a)(23), by reason of his conviction on May 10, 1967 under Sections 4, 7, and 16 of the Dangerous Drug Ordinance of 1936, and Section 212(a)(6) of the Customs Ordinance of 1957 of Israel.

The petitioner filed this petition for review of the Board's decision on May 20, 1975. Since the filing of this action Raizman has enjoyed the automatic stay of deportation which accompanies a petition for review filed pursuant to Section 106(a) of the Act.

Statement of Facts

Simcha Raizman is a thirty-two year old alien, a native of Russia and citizen of Israel. On May 10, 1967 Raizman was convicted in Israel of criminal charges relating to his possession and international transportation of cannabis resin (hashish) in violation of the Dangerous Drug Ordinance of 1936 and the Customs Ordinance of 1957 of Israel. Raizman was sentenced to a two year period of imprisonment for these offenses. The sentencing court noted that such imprisonment was warranted by reason of the quantity of the dangerous drugs found, the pre-planning including camouflage, and the international implications of the offense (T. 18, 19).*

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* References preceded by the letter "T" are to the tabs affixed to the certified administrative record previously filed with the Court.

Approximately six months after his release from confinement in Israel, Raizman applied for a nonimmigrant visa at the United States Consulate in Tel-Aviv, Israel. In his visa application Raizman knowingly submitted false information to the Consulate relating to his criminal conviction for the above-mentioned drug offenses (T. 20). The records of the Department of State indicate that Raizman denied having a criminal record or being a narcotic trafficker either in his application or during any interviews before consular officers. Because of his false representation Raizman was granted a visa and was admitted to the United States on January 26, 1971 as a non-immigrant visitor for pleasure authorized to remain in this country until July 26, 1971. Raizman failed to depart at the expiration of his authorized visitation and has been illegally working and residing in the United States since that time. On March 22, 1972 the Service commenced deportation proceedings against the alien charging that he was deportable under Section 241(a)(2) of the Act, 8 U.S.C. § 1251(a)(2) as a nonimmigrant visitor who remained in the United States longer than authorized (T. 14).

In September 1972 Raizman was found guilty in the State of New Jersey for the offenses of breaking and entering in violation of N.J.S. 2A:94-1; being armed with a dangerous weapon during the breaking and entering in violation of N.J.S.

2A:151-5; and possession of burglary tools in violation of N.J.S. 2A:94-3. On October 13, 1972 Raizman was sentenced to an indeterminate period of incarceration in a New Jersey correctional facility.

On July 2, 1974 Raizman appeared at a deportation hearing before Immigration Judge, Edward P. Emanuel. The alien, by his attorney, conceded deportability as charged in the Order To Show Cause (T. 13, p. 1-2). During the proceeding Raizman renewed an application for adjustment of his immigration status pursuant to Section 245 of the Act, 8 U.S.C. § 1255 (T. 15)*, and in the alternative, applied for the discretionary privilege of voluntary departure under Section 244(e) of the Act, 8 U.S.C. § 1254(e). See also 8 C.F.R. § 244. During the hearing the Immigration Judge admitted into evidence: Raizman's application for adjustment of status and supporting documentation (T. 2, 4, 9, 10); the previous administrative denial of his application for adjustment of status (T. 3); the Department of State records relating to his fraudulent entry (T. 20); the record of his New Jersey conviction and incarceration (T. 21);

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* Raizman had previously submitted an administrative application for adjustment of status under Section 245 of the Act based upon a petition submitted by Carole Tauber whom he married shortly after his entry to the United States as a nonimmigrant visitor (T. 17). This application was denied by the Service's District Director because of Raizman's excludability under Section 212(a)(19) and Section 212(a)(23) of the Act, 8 U.S.C. §§ 1182(a)(19) and 1182(a)(23). (T. 16)

Raizman's affidavit relating to his attempt to transport 10 lbs. of hashish to Denmark (T. 19); the record of Raizman's drug conviction in Israel (T. 18)*.

During the hearing Raizman maintained that his hashish offenses in Israel were not violations of any law or violation relating to the illicit possession of marijuana, and therefore, they did not render him excludable under Section 212(a)(23) of the Act. At the time of Raizman's hearing that same issue had been raised in the deportation proceedings of John Winston Ono Lennon, A17 595 321, and the determination of that issue was then pending before the Board of Immigration Appeals. It was therefore agreed that the determination as to whether or not Raizman's hashish offense rendered him excludable and ineligible for adjustment of status was to be bound by the Board's determination in the pending proceeding in Lennon.**

On July 16, 1974 the Board rendered its decision in Matter of Lennon, Interim Decision #2304 in which it determined that a hashish offense was a drug conviction within the meaning of Section 212(a)(23) of the Act. On the basis of the Lennon decision the Immigration Judge found Raizman ineligible for

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* By stipulation Raizman was to obtain and submit the "charge sheet" referred to in the Israeli conviction record (T. 13, p. 3; T. 18). This document was never submitted to the Immigration Judge or the Board for their consideration.

** In addition to a favorable decision on this issue Raizman would also need waivers for his excludability under Sections 212(a)(9) and 212(a)(19), 8 U.S.C. § 212(a)(9) and (19) in order for him to adjust his status.

adjustment of status, but granted him the discretionary privilege of voluntary departure (T. 12).

Raizman appealed the decision of Immigration Judge Emanuel to the Board. In his notice of appeal, and accompanying brief, the alien renewed his claim that his hashish offense did not render him excludable under Section 212(a)(23) and alleged a new ground which had not been claimed at the deportation hearing i.e. that a drug conviction for "attempted possession" was not an offense within the meaning of Section 212(a)(23). On February 20, 1975 the Board rendered its decision on both issues (T. 1). In its decision the Board stated that the two issues raised by Raizman in his appeal (T. 7, 8) had been decided against him in prior Board decisions and therefore the Board dismissed his appeal and affirmed the decision of the Immigration Judge. See Matter of Lennon, supra; Matter of Bronsztejn, Interim Dec. (BIA, November 26, 1974)*.

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* The issue as to whether or not a conviction for "attempt" is a conviction within the meaning of Section 212(a)(23) was decided by this Court in Bronsztejn v. Immigration and Naturalization Service, 526 F.2d 1290 (2d Cir. 1975), and has been abandoned by Raizman in this petition (Petitioner's brief p. 3). The issue as to whether or not a hashish conviction renders an alien excludable under Section 212(a)(23) was not reached by this Court in Lennon v. Immigration and Naturalization Service, 527 F.2d 187 (2d Cir. 1975) and is therefore again before this Court.

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RELEVANT STATUTES

Immigration and Nationality Act, Section 106 (8 U.S.C. § 1105a):

> Sec. 106. (a) The procedure prescribed by, and all the provisions of the Act of December 29, 1950, as amended (64 Stat. 1129; 68 Stat. 961; 5 U.S.C. 1031 et seq.), shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation. . . .
>
> (4) except as provided in clause (B) of paragraph (5) of this subsection, the petition shall be determined solely upon the administrative record upon which the deportation order is based and the Attorney General's findings of fact, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive.

* * * * *

Immigration and Nationality Act, Section 212 (8 U.S.C. § 1182):

> Sec. 212. (a) Except as otherwise provided in this Act, the following classes of alien shall be excluded from admission into the United States: . . . .
>
> (23) Any alien who has been convicted of a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, . . .

* * * * *

THB;n

Immigration and Nationality Act, Section 241 (8 U.S.C. § 1251):

> Sec. 241. (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who--. . . .
>
> (2) entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this Act or in violation of any other law of the United States;
>
> * * * * *

Immigration and Nationality Act, Section 245 (8 U.S.C. § 1255):

> Sec. 245. (a) The status of an alien, other than an alien crewman, who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is approve.

THB:n

ARGUMENT

RAIZMAN IS STATUTORILY INELIGIBLE FOR ADJUSTMENT OF STATUS UNDER SECTION 245 OF THE IMMIGRATION AND NATIONALITY ACT SINCE HE IS INADMISSIBLE TO THE UNITED STATES BY REASON OF HIS CONVICTION FOR POSSESSION OF CANNABIS RESIN.

A. General Background.

In order to show eligibility for adjustment of status under Section 245 of the Act, an alien must establish that he was inspected and admitted or paroled into the United States, that he is eligible to receive a nonimmigrant visa, that he is admissible to the United States for permanent residence, and that an immigrant visa is immediately available. Since adjustment of status is a privilege, the alien has the burden of establishing his eligibility. 8 C.F.R. 242.17(2); Montamuro v. I.N.S., 409 F.2d 832 (9th Cir. 1969); Cabrera v. I.N.S., 415 F.2d 1096 (9th Cir. 1969). Raizman was found inadmissible to the United States because he was excludable under Section 212(a)(23) of the Act as one who had been convicted of a law relating to the illicit possession of marijuana.*

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* There is no discretion under the Act to waive this ground of excludability and grant such an alien an immigrant visa.

On this appeal Raizman contends that his conviction does not place him within the exclusion provision of Section 212(a)(23) because "cannabis resin" is not "marihuana" within the meaning of Section 212(a)(23) and because the Israeli statutes under which he was convicted did not require "mens rea".

B. Petitioner's Conviction in Israel is a Conviction Within the Meaning of Section 212(a)(23).

Raizman's contention that "cannabis resin" is not marijuana within the meaning of the statute is based upon the testimony of a witness given during the deportation hearing in Matter of Lennon. That witness testified that "cannabis resin" is hashish but that it is not marijuana. The witness testified that the term marijuana, as commonly used in the United States, refers to the cut part of the "cannabis sativa" plant while the term "cannabis resin" refers only to the resin from the female plant at a time when the female begins to flower. Neither the Immigration Judge or the Board of Immigration Appeals accepted this technical chemical distinction made by the witness. Instead, the Board looked to the intent of Congress in enacting an excludability statute based upon a "marihuana" violation.

The term "marihuana" in Section 212(a)(23) is not defined in the Act, nor does the legislative history contain a clear statement as to the definition to be given the term. The legislative history does, however, set forth the purpose for which Section 212(a)(23) was amended and the probable meaning which Congress intended the term "marihuana" to have in the context of that section. The Narcotics Control Act of 1956 was specifically aimed at including possession of narcotics as a ground for excludability and deportability. The legislative history indicates that Congress believed the amendment of the immigration statute would call the exclusion and deportation provisions of the statute into question if an alien were convicted of possession of marihuana. U.S. Code Cong. & Ad. News, 84th Cong., 2d Sess. (1956), vol. 2, p. 3294, footnote 1. However, subsequent to the 1956 amendment several courts held that the term "narcotics" in the statute did not include marihuana. Consequently, in 1960 the immigration statute was amended to specifically include "marihuana" by name in the exclusion and deportation provisions relating to narcoties. The stated purpose of the 1960 amendment relating to marihuana was to confront the growing problem of drug abuse and to provide for the exclusion and deportation of aliens convicted of possession of marihuana. S. Rep. No. 1651, 86th Cong., 2d Sess. U. S. Code

Cong. & Ad. News, p. 3134-35 (1960).

Prior to the 1960 amendment, Congress had enacted several other laws relating to marijuana, and in each of those statutes marijuana was defined as including "cannabis resin". 21 U.S.C. § 802(15); Act of August 16, 1954, Ch. 736, 68 A Stat. 565; Act of July 18, 1956, Ch. 629, § 106, 70 Stat. 570. In addition, the United Nations Convention on Narcotic Drugs of 1961 treats "cannabis resin" as marijuana. 18 U.S. Treaty Series 14, Art. 1. See also, United States v. Piercefield, 437 F.2d 1188 (5th Cir. 1971), cert. denied, 403 U.S. 933 (1971); United States v. Cepelis, 426 F.2d 134 (9th Cir. 1970), cert. denied, 404 U.S. 846 (1971).

Raizman contends that the provisions of 8 U.S.C. 1182(a)(23) should be strictly construed in light of the drastic consequences of deportation. Further, he argues that Congress did not manifest an intent to include convictions relating to "cannabis resin" under 8 U.S.C. § 1182(a)(23), and that there are no persuasive reasons for this Court to uphold the Board's construction.

It is respectfully submitted that the statute which defines an excludable class of aliens should be liberally construed when it is in the public interest to do so, and would result in the exclusion of those aliens whom Congress intended to exclude. See Boutilier v. I.N.S., 387 U.S. 118 (1966). As noted

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above, the interest of Congress was to include conviction relating to "cannabis resin" under the statutory provisions of 8 U.S.C. § 1182(a)(23). Furthermore, this Court has acknolwedged that Congress used "broad language" to define those drug offenses which result in deportation. Bronsztejn, supra, at 1292.

As the Board reasoned in Matter of Lennon it would be illogical to construe Section 212(a)(23) as requiring the exclusion of an alien convicted for possession of marijuana but permit the entry of an alien convicted of possession of "cannabis resin", the more potent derivative of the cannabis sativa plant.*

The petitioner's construction is hypertechnical and illogical and without support in the broad and inclusive statutory language or in the legislative history. We submit that the Court should reject that strained construction and adopt the Board's construction which is reasonable, consistent with the legislative history, and effects the congressional purpose. Bronsztejn, supra; See also Nazareno v. Attorney General, 512 F.2d 936, 940 (D.C. Cir. 1975), cert. denied, ___ U.S. ___ (1975).

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* Likewise the petitioner's proffered construction would lead to the deportation of a lawful permanent resident alien under 8 U.S.C. § 1251(a)(11) for mere possession of a single marijuana cigarette yet relieve an alien from similar consequences although he had been convicted for possession of substantial amount of "cannabis resin". See Van Dijk v. I.N.S., 440 F.2d 798 (9th Cir. 1971).

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C. Raizman's Claim that he is not Excludable Under Section 212(a)(23), because the Israeli Statutes Under Which He was Convicted Impose Absolute Liability and make Guilty Knowledge Irrelevant, Should Not be Reviewed in this Judicial Proceeding.

Raizman contends that his Israeli conviction under the Dangerous Drug Ordinance of 1936 and the Customs Ordinance of 1957 do not render him excludable because those statutes impose an absolute liability for possession of "cannabis resin" and do not require "mens rea" as an element for conviction. This argument was never raised in the administrative proceedings below nor was it raised in his petition for review to this Court. The issue is being raised for the first time in the petitioner's supplemental brief to this Court.

Section 106(a)(4) of the Act, requires that a petition for review of a final order of deportation shall be determined solely on the basis of the administrative record upon which that order is based. The petitioner now raises a new issue before this Court which has never been decided by the Service's District Director under 8 C.F.R. § 245.2, or by the Immigration Judge and the Board in a proceeding under Section 242 of the Act, 8 U.S.C. § 1252. The evidence the petitioner seeks to have this Court consider is not a part of the administrative record

nor has the Government had an opportunity to rebut this evidence or even consider it with respect to this alien's application for adjustment of status. In the Lennon case upon which the petitioner relies, the argument relating to absolute liability in the British narcotics law had been raised from the beginning of the administrative process. In that case, the Board analyzed Lennon's claim in detail and its findings with respect to the British statute were contained in the administrative record.

The courts have consistently adhered to the view that objections should be timely raised in the administrative proceedings and that administrative decisions should not be reversed unless the administrative body has erred against an objection that was properly raised below. See Federal Power Commission v. Colorado Interstate Gas Co., 348 U.S. 492 (1954); N.L.R.B. v. Newton-New Haven Co., 506 F.2d 1035 (2d Cir. 1974); K.F.C. National Management Corp. v. N.L.R.B., 497 F.2d 298 (2d Cir. 1974); D.C. Transit Systems Inc. v. Washington Metropolitan Area, 466 F.2d 394, cert. denied, 409 U.S. 1086. It is respectfully submitted that this rule should apply in the instant action.*

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* We note that the Israeli verdict (T. 18) indicates that Raizman's conviction was not based upon a theory of absolute liability. Further, nothing in the petitioner's supplemental appendix demonstrates that the Israeli courts have interpreted the relevant statutes as the petitioner argues. In fact, the petitioner's "expert" indicated a contrary conclusion in his original report which was furnished at the pre-argument conference in this action. See Respondent's addendum.

THB:n

CONCLUSION

The petition for review should be denied.

Dated: New York, New York

March , 1976

Respectfully submitted,

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York,
Attorney for the Respondent.

THOMAS I. BELOTE
MARY P. MAGUIRE
Special Assistant United States Attorneys,

Of Counsel.

Respondent's Addendum

FINE & DAGAN, ADVOCATES & ATTORNEYS-AT-LAW
6 Maikay Israel Square, Tel-Aviv

LEON FINE, B.A., LL.B. (New York)
SHIMON DAGAN, LL.B. (Jerusalem)

Telephone 25 75 25, 25 93 55
Cables: EASTLAW Tel Aviv

Our File 80/5/P

Date January 6, 1976

Edward L. Dubroff, Esq.
Counsellor at Law
50 Court Street
Brooklyn, N.Y. 11201
U.S.A.

Dear Mr. Dubroff,

I received your letter and enclosure of December 23 and hasten to reply. I am sorry that I did not receive your first letter, which was mis-addressed.

Per your request, I enclose herewith photocopies of the official versions of the sections of the Dangerous Drugs Ordinance and Customs Ordinance, which you require.

I am also enclosing a copy of an article I wrote several years ago on "Drugs, The Law and Israel"; same was intended for young people and was written (in 1971) at a time when there was a lot of drug use and dealing going on.

As to your particular question regarding guilty knowledge, if I am not mistaken, I assume you refer to the criminal intent of the accused under these sections pertaining to possession and use, including export, import, etc. of dangerous drugs. The law certainly requires proof of such intent. However, the fact of possession is sufficient to transfer the burden of proof regarding the innocent or non-criminal use or possession thereof, to the defendant, who must then in a sense convince the Court of same.

The law does not impute absolute liability to one in possession or use of drugs, but greatly reduces the burden of proof of the prosecution in connection with these sections.

Regarding the Customs law, there have been clear Court precedents here ruling that:

1. The prosecution must prove "mens rea", i.e. criminal intent.

2. It is not essential for them to prove that the defendant actually intended to defraud or cheat the customs authorities or even that he had specific, guilty knowledge regarding the incorrectness of his statement to them. It is sufficient if it is proven that his statement was incorrect and that same

Cont'd.

was not due to an honest error or inadvertance, but rather due to either deceit or negligence on his part.

I enclose an English language version of the Customs Ordinance, as well as the Drugs Ordinance.

Perhaps I can be of further help, if you would be kind enough to tell me the purpose of your inquiry regarding the sections of law referred to herein.

If you like, I can give you a more detailed legal opinion or state same under oath in an Affidavit form, confirmed by the American Consulate and similarly make confirmation of the authenticity of the laws referred to.

Upon hearing from you, I will reply immediately thereafter.

Sincerely yours,

Leon Fine, Advocate

LF/bk

Encls.

DRUGS, THE LAW AND ISRAEL

by Leon Fine

It won't be written in the tourist visa that is stamped in your passport at Lod Airport or when you disembark from the ship in Haifa. For most tourists and visitors to Israel it is not necessary. For more and more young travellers, both "straight" and "hip", the news is going out — ISRAEL CAN BE A BAD TRIP IF YOU'RE "BUSTED" FOR DRUGS. If convicted of "holding" (possession), "dealing" (buying or selling) or "turning on" (smoking) hashish or other drugs, the Promised Land can become a jail for up to 10 years.

Even before the Six Day War in 1967 "hash", was a common sight in certain Arab cafes and meeting places. It was found among some of the Jewish immigrants who brought the habit with them from the Arab or Moslem countries where they grew up. More often, Israel was just another stop on the smuggling route (by boat or in camel caravans through the Negev desert), from Lebanon to Jordan and Egypt. Israel, and Palestine before it, has always been on the path followed by smugglers from the drug producing countries in the area (Lebanon, Jordan and Turkey) to the drug consumer countries of the western world.

In the last few years many more have entered this risky activity. In 1970, more than 2,000 persons were convicted of drug violations in Israel. Some 500 were "tourists" and nearly half were citizens of the U.S.A. or Canada; approximately 50 of the latter were women. Most were charged with possession or use of hashish, as opposed to peddling or export.

The relevant Israeli law is the Dangerous Drugs Ordinance of 1936, known in Hebrew as "Pekudat Hasamim Hamesucanim." It was enacted during the British Mandate in Palestine and with its several changes and additions is still valid and applicable today. "Dangerous Drugs" means those substances described in the Appendix to this Ordinance. The drugs specified include opium, morphine, cocaine and cannabis sativa, (i.e. hashish and marijuana). L.S.D. and Mescaline have just been added to the list and 'Speed" (Amphetimine) will probably be added soon.

Except for persons or institutions receiving legal authorization, the preparation, possession, use, export, import, transportation or sale of these drugs is forbidden and punishable. This is so, whether one commits such acts for profit or otherwise. One may not allow his premises to be used for any of these purposes. Israeli citizens or residents who violate this law can be prosecuted here for such acts even if they actually commit them abroad, provided that the act is also forbidden in the foreign jurisdiction. Every offense under the Ordinance or any Rules made thereunder ..."shall be a felony, and every person guilty of such an offense shall in respect of each such offense be liable on conviction on information (indictment) to imprisonment for a period not exceeding ten years, or to a fine up to fifty thousand pounds or to both such penalties"...

These punishments are maximum sentences and may be imposed only in cases tried by a District Court bench consisting of three Judges. If an accused is brought to trial before a single District Court Judge, be may be sentenced to up to four years. If tried in the Magistrate's Court, one faces three years' imprisonment. (There is no jury system in Israel).

A non-Israeli citizen who is convicted or even merely accused of a drug violation in Israel may, in addition to any other punishment, be subject to an expulsion order. This can compel him to leave Israel and, under certain circumstances, forbid his return. A person convicted in Israel who returns to North America may face additional charges, if a Court in his home country deems that he committed a substantial part of the offense there, such as conspiracy, providing or sending the money for its purchase or possessing or receiving the drugs.

First offenders and those convicted of possession of small quantities — up to one ounce or so — may receive a suspended prison sentence or probation and a fine. Their chances are better if they are young, relatively "straight" — i.e. not appearing too hippy-like — and there are no aggravating circumstances involved. Promising to leave the country immediately and showing the Judge a valid airline ticket may sometimes prevent imposition of actual imprisonment. The District Attorney (who prosecutes in the District Court) or the Police (prosecuting in Magistrate's Court) generally ask the Court to impose severe sentences. Judges tend to accept their arguments that prison sentences and heavy fines are necessary in order to deter what is now considered here to be an alarming new type of crime.

A conviction on drugs can turn up to haunt a young American or Canadian when he returns to his or her university or applies for a teaching permit or position in a company, etc. It may have been a "bust" or conviction for a single "joint", but his criminal record in the States or Canada will read, "conviction of narcotics laws in the State of Israel."

The American and Canadian Embassies in Israel keep advised of such cases and usually report them to their home authorities.

Persons appearing to be hippies can expect to be stopped and searched now and then by Israeli policemen. The latter do not require a search or arrest warrant if there are reasonable grounds to believe a person is in possession of drugs. One can be arrested even without a warrant — if he refuses to accompany a policeman to the nearest Police Station, if the latter has "rea-

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[1] Hashish is the Arabic word for cannabis sativa, the source of both hashish and marijuana. The latter a grass-like substance, is usually used to make "joints", i.e. cigarettes. Hashish is of denser texture and is smoked in a pipe.

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sonable grounds" to believe a felony has been committed. Similarly, he may be arrested if he is found in suspicious circumstances and attempts to evade the policeman and has no means of supporting himself or has no reasonable explanation regarding same.

A policeman can search any person, his possessions, home or place of lodging, if there are reasonable grounds to believe he is committing or has just committed a felonious crime -- and possession of hashish is a felony. Even if the Court determines at trial that the policeman's arrest, search or seizure was unjustified, the evidence can still be used to convict him at trial.

There is no formal Constitution in Israel. Nevertheless, the law provides that one has the right to remain silent if arrested and refuse to make any statement. If arrested, he has the right to make one telephone call. If he knows or wishes a lawyer, he may call him. Otherwise, he may call his Embassy. The Police must allow the lawyer of his choosing to visit him at the first opportunity. Drug charges in Israel are usually serious matters and accused persons should have legal counsel. Suspects who wish to give written statements to the Police should do so in English, if they are not fluent in Hebrew. They might also insist that all proceedings and documents at the Police Station and in Court be translated into English.

The Police are required to bring every arrested person before a Magistrate within 48 hours in order to receive Court authorization for continued detention. They usually ask for and often receive up to 15 days further detention for "completion of the investigation." Though there are no professional bail bondsmen or bonds in Israel, one can ask for release on bail. If you are found with more than a few grams of hashish, the Magistrate might insist on a deposit of a cash bond in Court, as well as a responsible Israeli who will guarantee your presence in Court when required, if released on bail.

A tourist's passport may and usually will be detained by the Police and his departure from Israel forbidden until the end of the case. If he leaves before then, the bail may be forfeited, i.e. the bail guarantor may have to forfeit or pay the sum of his guarantee. An arrest warrant for persons jumping bail might be sent abroad through Interpol. An extradition treaty exists between Israel and the U.S. and several other countries and most drug violations are considered to be extraditable offenses.

Trials are usually held within a few weeks for persons in jail or a month or two for those out on bail. Abu Kabir, the Tel-Aviv district jail, is filled with prostitutes, pimps and members of Israel's small, but colorful underworld. It is not a pleasant place to visit, even for people who like interesting places and off-beat characters. Nevertheless, if release on bail is not permitted, the time spent there awaiting trial may be credited against any prison sentence thereafter received, if requested. Sometimes it is possible to be transferred to Ramle Prison or Nave Tirtsa Women's Prison, both of which occasionally accept arrested persons awaiting trial. Their facilities are more extensive and inmates may receive visitors, mail and food packages to an extent not possible at "Abu Kabir."

Males over 16 and females over 18 years of age can and will be tried before a regular Court. Juvenile Courts have jurisdiction over girls less than 18 and boys less than 16 or only 15 in certain cases. Under certain circumstances, application can be filed with the Attorney General for a Stay of Proceedings, (i.e. cancellation of the criminal charges). A defendant also has the right to appeal both the conviction and/or severity of a sentence. However, the prosecutor may also appeal what he may consider too lenient a sentence. Sometimes he does so only if the defendant appeals the severity of a sentence.

If sentenced to 3 months' imprisonment or less, one can request the Police Ministry to allow him "outside work" (i.e. clerical or manual labor at a Police Station) instead of actual imprisonment. A prisoner may request and will usually be granted a reduction of his prison sentence by a third for good behavior. Such reduction is applicable with respect to prison terms of 3 months or more. Finally, one may apply to the President of the State of Israel for Clemency or a Pardon.

Remember Israel has lots of groovy scenes including a highly regarded fortune teller (Sheik Idris in Baka Algabiya near Natanya). It has the only village in the world where everyone is either a naturalist or a vegetarian and visitors are welcome (Moshav Amiram in the Galilee). It is also the only country where an American Jew will have the mixed pleasure of being called an "Anglo Sexsi" by the natives. So have a good time and leave your overweight baggage at home. One final consolation is that if you were busted in Spain for the same thing, the prison food might be better, but you would face a minimum and mandatory 6 year prison sentence. In Turkey hashish smugglers get the firing squad.

(1) המסלק טובין חבי מכס ממחסן בלא רשותו של פקיד־המכס המוסמך או בלא תשלום מכס או בלא ערובה לשילומו;
(2) המשמיד במזיד טובין שהוחסנו כהלכה;
(3) התוקף פקיד־מכס, או אדם אחר המועסק כהלכה במניעת הברחה, המתנגד להם או המפריע להם אגב שימוש בכוח או באלמות בשעת מילוי תפקידם.

(ב) נתחייב פקיד־מכס בדין על עבירה לפי סעיף קטן (א) (2) לא ישולם מכס על אותם טובין והממשלה רשאית לצוות על תשלום פיצויים מתוך הכנסות המדינה.

הברחה

211. (א) אלה דינם מאסר שישה חדשים או קנס מאה לירות, ובהחזקת טובין מוברחים אף תשלום פי שלושה מסכום המכס החל על אותם טובין:
(1) המבריח טובין;
(2) המחזיק טובין מוברחים או טובין שייבואם אסור ולא הוכיח שיש לו הֶצְדֵק כדין להחזיקם;
(3) מי שבהחזקתו או במרותו או בפיקוחו טובין שייצואם אותה שעה אסור או מוגבל או מוסדר והוא מתכוון להבריחם או יודע שיש כוונה להבריחם.

(ב) קברניט או בעל כלי שיט או כלי הובלה המשתמש, או המניח ביודעין להשתמש, בכלי שיט או בכלי הובלה שלו להברחת טובין, או להובלה שלא כדין של טובין מוברחים או מהולטים, דינו — העונשים שנקבעו בסעיף קטן (א).

(ג) נעברה העבירה הנזכרת בסעיף קטן (א) (3) במצב מלחמה שמדינת ישראל מעורבת בה, מותר להגדיל את העונש כדי מאסר שנתיים או קנס של 500 לירות.

עבירות מכס אחרות

31.1.מ"ב? תשל"א

212. (א) אלה דינם מאסר שנתיים או קנס 500 לירות או שני העונשים כאחד:
(1) המשתמט מתשלום מכס שיש לשלמו;
(2) ~~המשיג החשבון שאין לשלמו;~~
(3) המכין, המעביר או המציג תעודה שהיא, כביכול, חשבון־מכר אמית ולמעשה איננו כזה;
(4) המגיש רשמון כוזב או לא נכון בפרט מסויים;
(5) המביא לישראל טופס או נייר אחר הנחזה כטופס שאפשר לכתוב תרפו ולהשתמש בו כחשבון־מכר של טובין הבאים מארצות חוץ, או המחזיק טופס או נייר כאמור ולא הוכיח שיש לו הֶצְדֵק כדין להחזיקו;
(6) המוסר בהצהרה או בתעודה שהוגשו לפקיד־מכס אֲמָרָה שאינה נכונה או שאינה מדוייקת בפרט מסויים, או המגיש או המוסר לפקיד־מכס הצהרה או תעודה שיש בהם אמרה כזו;
(7) המוציא מרשותו טובין שנפטרו ממכס מחמת שיובאו בשביל צבא־הגנה לישראל, או בשביל מוכר או אדם הזכאים לייבא טובין אלה בלא מכס, ומעבירם לכל חברה, פירמה או אדם שאינם זכאים לייבא אותם טובין בלי מכס, ולא הודיע תחילה למנהל על פרטי העבירה זו;

או סימנים אחרים של פקיד־מכס, או שפקיד־מכס משתמש בהם, לאימות מסמך או שטר או להבטחת טובין או לכל מטרה אחרה בניהול ענינים הנוגעים לרשות־המכס;
(9) המטעה פקיד־מכס בפרט מסויים העלול לפגוע במילוי תפקידו;
(10) המטלטל טובין הנתונים לפיקוח רשות־המכס, המשנה אותם או הנוגע בהם, שלא על פי רשות;
(11) המסרב להשיב, או נמנע מהשיב, על שאלות, או המסרב להגיש, או נמנע מהגיש תעודות;
(12) המוכר טובין, או המציג אותם למכירה, או המחזיק אותם לשם מכירה או לשם מסחר באניה שבנמל, והטובין לא פורטו בתסקיר של האניה לפי סעיף 53;
(13) המוכר טובין, או המציע אותם למכירה, בתור טובין מוברחים או שייבואם אסור.

(ב) שום דבר האמור בסעיף זה לא יפגע בזכויותיו של אדם הפועל מכוח רשיון שניתן לו בהתאם לסעיף 200.

גיבוי קנס

213. כל קנס שהטיל בית משפט באישום מכס, או שהטיל המנהל לפי הוראות סעיף 231, יראוהו כקנס שהוטל במשפט פלילי ויהא ניתן לגיבוי בעיקולם ובמכירתם של מקרקעין או של מטלטלין.

עונש כללי

214. כל העובר על הוראה מהוראות פקודה זו ולא נקבע לה בפקודה עונש אחר, דינו — מאסר שישה חדשים או קנס 100 לירות או שני העונשים כאחד.

215. (א) העושה אחד המעשים הבאים להלן בטובין שייבואם אסור או מוגבל או מוסדר וסעיף זה חל עליהם, אשם בעבירה על פקודה זו:
(1) המחזיק טובין כאמור באניה ולא הוכיח שיש לו לכך הֶצְדֵק סביר;
(2) המבריח, או המנסה להבריח, לישראל טובין כאמור;
(3) המחזיק טובין כאמור לאחר שהוברחו לישראל ולא הוכיח שיש לו לכך הצדק כדין;
(4) מסייע, מעודד, מייעץ, או המביא להברחת טובין כאמור לישראל, או שנמצא מעורב ביודעין בהברחה כאמור;
(5) הנמנע מגלות לפקיד־מכס, לפי דרישתו, ידיעה שיש לו, או שבכוחו להשיג, בנוגע להברחת טובין כאמור לישראל או לכוונת הברחה כזאת;
(6) המפרסם, המוכר, המציע למכירה, המפיץ או המעתיק פרסום שייבואו נאסר לפי סעיף 40(ב) או נֹסח מפרסום כזה.

(ב) סעיף זה יחול על כל טובין שייבואם אסור, מוגבל או מוסדר והממשלה הכריזה בצו שהסעיף יחול עליהם.

Smuggling.

211. (a) The following are liable to imprisonment for six months or a fine of one hundred pounds and, in the case of possession of smuggled goods, to the payment of treble the duty on such goods: —

(1) any person who smuggles any goods;

(2) any person who without lawful excuse, proof whereof shall lie upon him, has in his possession any smuggled goods or prohibited imports;

(3) any person who has in his possession, power or control any goods of which the export is for the time being prohibited, restricted or regulated with intent to smuggle or knowing that they are intended to be smuggled.

(b) The master or owner of a vessel or means of conveyance who uses his vessel or means of conveyance, or knowingly suffers it to be used, in smuggling or unlawfully conveying any smuggled or forfeited goods is liable to the penalties prescribed by subsection (a).

(c) If the offence mentioned in subsection (a)(3) is committed whilst a state of war exists in which the State of Israel is engaged, the penalty may extend to imprisonment for two years or a fine of five hundred pounds.

Other customs offences.

212. (a) The following are liable imprisonment for two years or a fine of 500 pounds or both such penalties: —

(1) any person who evades payment of any duty which is payable;

S. Ch. of 5721, p. 28.

(2) any person who obtains any drawback which is not legally due to him;

(3) any person who prepares, passes or presents any documents purporting to be a genuine invoice which is not in fact a genuine invoice;

(4) any person who makes an entry which is false or incorrect in any particular;

(5) any person who brings into Israel, or has in his possession without lawful excuse, the proof of which shall lie upon him, any bill heading or other paper appearing to be a bill heading capable of being filled up and used as an invoice for goods from foreign parts;

(6) any person who makes in any declaration or document produced to any customs officer any statement which is untrue or incorrect in any particular or produces or delivers to any customs officer any declaration or document containing any such statement;

(7) any person who disposes of any goods which have been exempted from duty on the ground that they are imported for the Israel Defence Forces or for any institution or person who is entitled to import such goods free of duty, to any company, firm or person not entitled to import such goods free of duty, without prior notice of the particulars of disposal to the Director;

(8) any person who fraudulently alters any document or instrument or counterfeits the seal, signature, initials or other marks of, or used by, any customs officer for the verification of any such document or instrument or for the security of goods or any other purpose in the conduct of business relating to the Customs;

(9) any person who misleads any customs officer in any particular likely to affect the discharge of his duty;

(10) any person who moves, alters or interferes with, except by authority, any goods subject to the control of the Customs;

(11) any person who refuses or fails to answer questions or to produce documents;

(12) any person who sells or exposes for sale or has in his possession for sale or for the purpose of trade on board any ship in a port any goods not shown in the ship's report as required by section 53;

(13) any person who sells or offers for sale any goods as prohibited imports or smuggled goods.

(b) Nothing in this section shall affect the rights of any person acting under a licence issued to him in accordance with section 200.

Recovery of fine.

213. Any fine imposed by the court in a customs prosecution or by the Director in accordance with the provisions of section 231 shall be deemed to be a fine imposed in a criminal action and may be recovered by attachment and sale of any immovable or movable property.

General penalty.

214. Any person who contravenes any of the provisions of this Ordinance for which no other penalty is prescribed in this Ordinance is liable to imprisonment for six months or a fine of one hundred pounds or both such penalties.

Special provisions in relation to prohibited imports.

215. (a) There shall be guilty of an offence against this Ordinance any person who, in regard to any prohibited, restricted or regulated import to which this section applies does any of the following things, namely: —

(1) without any reasonable excuse, proof whereof shall lie upon him, has in his possession on board any ship any such import;

(2) smuggles, or attempts to smuggle, into Israel any such import;

(3) without lawful excuse, proof whereof shall lie upon him, has in his possession any such import which has been smuggled into Israel;

(4) aids, abets, counsels or procures, or is in any way knowingly concerned in, the smuggling into Israel of any such import;

(5) fails to disclose to a customs officer or demand any knowledge in his possession or power concerning the smuggling or intended smuggling into Israel of any such import;

aircraft passes over Palestine without landing, or to such quantities of dangerous drugs as may, *bona fide*, reasonably form part of the medical stores of any ship or aircraft.

Preparation, manufacture and conversion of dangerous drugs prohibited.

6. No person shall cultivate, manufacture or prepare any dangerous drugs mentioned in part I of the schedule, or manufacture, prepare or convert any drug obtained from any of the phenanthrene alkaloids of opium or from ecgonine alkaloids of the coca leaf.

Trade in and possession of dangerous drugs prohibited save under licence.

7. (1) Except where the dangerous drug is lawfully in transit, no person shall be in possession of any dangerous drug mentioned in part I of the schedule, or trade in or be in possession of any dangerous drug mentioned in part II of the schedule, unless such trade and possession is authorized in accordance with the provisions of this Ordinance or any rules made thereunder.

(2) A person shall be deemed to trade in or be in possession of a dangerous drug if it is in his actual custody or is held by any other person subject to his control or for him or on his behalf.

Aiding and abetting offences within or out of Palestine.

8. Any person who—

(*a*) aids, abets, counsels or procures the commission of any offence under sections 4, 5, 6 or 7 of this Ordinance, or

(*b*) in Palestine aids, abets, counsels or procures the commission in any place outside Palestine of any offence under the provisions of any corresponding law in force in that place, or does any act which, if committed in Palestine, would constitute an offence under sections 4, 5, 6 or 7 of this Ordinance,

shall be punishable with a like penalty as if he himself had committed the offence.

Authorized possession.

9. (1) Possession of the drugs mentioned in part II of the schedule shall be deemed to be authorized for the purpose of this Ordinance if:—

(*a*) the possessor is a licensed pharmacist and the drugs are kept on his licensed premises;

(*b*) the possessor is a licensed medical practitioner, dentist or veterinary surgeon authorized under any Ordinance concerning medical practitioners, dentists or veterinary surgeons to keep such drugs;

(*c*) the possessor proves that the drug in his possession was purchased by him from a licensed pharmacist and such sale was conducted in accordance with the provisions of the Public Health (Pharmacy) Ordinances, 1919-1930, or that the drug was obtained from a medical practitioner or veterinary surgeon allowed to dispense drugs or medicine in accordance with section 16 thereof;

(*d*) it is authorized by any rule made under this Ordinance.

Search warrants for premises in relation to suspected offence.

10. If a Magistrate is satisfied that there is reasonable ground for suspecting that, in contravention of the provisions of this Ordinance or any rule made hereunder, any dangerous drug is in the possession or under the control of any person in any premises, or that any document relating to or connected with any transaction which was, or would be, if carried out, an offence against this Ordinance, or, in the case of a transaction carried out or intended to be carried out in any place outside Palestine, an offence against the provisions of any law therein in force, is in the possession or under the control of any person in any premises, he may grant a search warrant authorizing any Police Officer at any time within one month from the date of the warrant to enter the premises named in the warrant, and to search the premises and any person found therein, and, if there is reasonable ground for suspecting that an offence against this Ordinance has been committed in relation to any such drugs which may be found in the premises or in the possession of any such person, or that any document which may be so found is such a document, to seize and detain the drugs or the document.

Application of Arrest of Offenders and Searches Ordinance, 1921.

11. The Arrest of Offenders and Searches Ordinance, 1921, shall apply to search warrants under this Ordinance:

Provided that the provisions of section 17 of the said Ordinance shall not be applicable.

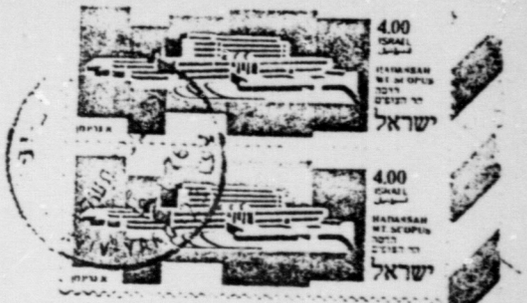
Right of entry and inspection.

12. The Director may at all reasonable times enter upon the premises of any person authorized to be in possession of dangerous drugs under section 9(1)(a), (b) and (d) of this Ordinance for the purpose of examining stocks of dangerous drugs held by such person and the records and registers of transactions in dangerous drugs prescribed to be kept by such person in accordance with this Ordinance or any rules made thereunder, and may require such person to produce for inspection all documents, invoices and authorizations relating to his transactions in dangerous drugs.

Any person who refuses to grant entry to the Director to such premises or obstructs or impedes either by himself or by a third person the entry of the Director, or fails to produce on demand all stocks of dangerous drugs kept by him or under his control, or the records and registers prescribed to be kept by him, or other documents relating to his transactions in dangerous drugs required by the Director, shall be guilty of an offence under this Ordinance.

Failure to keep records and registers an offence.

13. Any person who being required by this Ordinance or the rules made thereunder to maintain records and registers of transactions in dangerous drugs fails to do so in the manner prescribed, shall be guilty of an offence under this Ordinance.



Edward L. Dubroff, Esq.
Counsellor at Law
50 Court Street
Brooklyn, N.Y. 11202
U.S.A.

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LEON FINE
6 MALKAY ISRAEL SQUARE
TEL-AVIV, ISRAEL